

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Johnnie W. Byrd, III,

Case No. 5:18cv210

Petitioner,

v.

ORDER

David Gray, Warden

Respondent.

This is a state prisoner habeas corpus case under 28 U.S.C. § 2254(d). Following referral to United States Magistrate Judge Carmen Henderson for a Report & Recommendation, Magistrate Judge Henderson has filed her Report & Recommendation, in which she recommends denial of the petition. (Doc. 20). In response, the petitioner has filed objections. (Doc. 23). The Warden has not filed a response.¹

Having conducted a *de novo* review, I find no merit in the petitioner's objections to the Report & Recommendation, which, in addition to denying the petition, I adopt as the Order of this Court. I also agree that I should not grant a Certificate of Appealability.

Discussion

The petitioner opened, owned, and operated a convenience store in Akron, Ohio. It was small in size – about 820 square feet (*i.e.*, about 20 by 40 feet or so). Before the defendant's

¹ The petitioner has also filed a motion to expand the record. (Doc. 24). I agree with the Warden that the petitioner is not entitled to do so at this stage of proceedings, *see* Doc. 25). Accordingly, I overrule the petitioner's motion to expand the record.

Summit County Court, Ohio, indictment and conviction on multiple charges relating to food stamp fraud, his operation generated between \$750,000 and \$1,500,000. Ohio food stamp fraud investigators, determined that the amount of electronic benefits transfers (*i.e.*, the “currency” which food stamp recipients use under the federally funded Supplemental Nutrition Assistance Program) was roughly similar to those during a comparable period at a Wal-Mart.

The defendant managed the store. He was no absentee overseer: he was on the premises daily and in charge of its operations.

In his habeas petition, which he timely filed after unsuccessfully exhausting his state court remedies, he claims that the evidence was insufficient to sustain his conviction. His principal contention in the state court proceedings, which he renews here, is that there was insufficient evidence that he had knowledge of his store’s illegal conduct.

That is his story, and he is sticking to it. But on review of the record and the Magistrate Judge’s Report & Recommendation, it quickly becomes unstuck. On its own careful review of the record, the extensive evidence of which I need not re-recite here, the State Court of Appeals fully explicated the circumstantial evidentiary basis underpinning and upholding the jury’s multiple findings of guilt. Even the cursory summary at the outset of this opinion suffices to show that the jury had ample ground to find the petitioner was well aware that was a food stamp mill.

From that mill came a steady, and stupendous, amount of cash, which passed directly into and through his hands. The defendant knew what (and why) he would be doing when he incorporated himself, had another person apply for the food stamp license for which his prior convictions for doing the same thing disqualified him, and opened his doors for is illegal trade and undeserving customers.

The petitioner earned, along with his ill-gotten gains, his indictment, jury verdicts, and sentences. To the same degree that that was so, he is not entitled to, and certainly does not deserve habeas corpus relief.

It is, accordingly,

ORDERED THAT:

1. The petitioner's objections to the Magistrate Judge's Report & Recommendation (Doc. 23) be, and the same hereby are overruled;
2. The Magistrate Judge's Report & Recommendation (Doc. 20) be, and the same hereby is adopted as the Order of this Court;
3. The petition for habeas corpus relief (Doc. 1) be, and the same hereby is denied; and
4. The petitioner's request for a Certificate of Appealability be, and the same hereby is denied, as jurists of reason could not rationally disagree with this Order or its rationale.

So ordered.

/s/ James G. Carr
Sr. U.S. District Judge